

UNITED STATES OF AMERICA, and the
STATE OF TEXAS,

Civil Action No.: 3-99 CV 1398-H

Filed: June 21, 1999

FINAL JUDGMENT

AND WHEREAS, plaintiffs intend to preserve competition by requiring Aetna to divest its interests in the Houston operations of NYLCare Health Plans of the Gulf Coast, Inc. and the Dallas operations of NYLCare Health Plans of the Southwest, Inc., consisting of, among other assets, approximately two hundred sixty thousand (260,000) and one hundred sixty seven

thousand (167,000) commercially insured HMO and HMO-based POS enrollees, respectively;

AND WHEREAS, plaintiffs require defendants to make the divestitures for the purpose of establishing a viable competitor in the development, marketing, and sale of HMO and HMO-based POS health plans in the Houston and Dallas areas;

AND WHEREAS, plaintiffs require defendants to make the divestitures for the purpose of redressing the effects that the United States and the State of Texas allege would otherwise result from Aetna's proposed acquisition of Prudential's health care assets, including the ability to depress physicians' reimbursement rates in Houston and Dallas, which is likely to lead to a reduction in quantity or a degradation in the quality of physician services provided to patients in those areas;

AND WHEREAS, defendants have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

- . "Aetna" means Aetna Inc., a Connecticut corporation with its headquarters and principal place of business in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and its directors, officers, managers, agents, and employees.
- . "Dallas" means the entire service area of NYLCare-Southwest including, but not limited to, the following Texas counties: Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant.
- C. "Excluded Assets" means those businesses of NYLCare-Gulf Coast and NYLCare-Southwest that need not be divested, which consist of (1) all Medicare HMO plans; (2) commercial HMO and HMO-based POS accounts not located in Houston or Dallas; (3) provider network rental arrangements for PPO plans; and (4) administrative services contracts with self-funded plans.
- D. "Houston" means the following Texas counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.
- E. "NYLCare-Gulf Coast" means NYLCare Health Plans of the Gulf Coast, Inc., a wholly owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Central and Southeastern Texas, excepting the Excluded Assets, and includes:
 - 1. all tangible assets necessary to compete in the sale or administration of HMO and HMO-based POS plans; all personal property, inventory, office

furniture, fixed assets and fixtures, materials, supplies, facilities, and other tangible property or improvements used in the sale or administration of HMO and HMO-based POS plans; all licenses, permits, and authorizations issued by any governmental organization relating to HMO and HMO-based POS plans; contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees; all other contracts, agreements, leases, commitments, and understandings pertaining to HMO and HMO-based POS plans; all contracts with accounts located in Houston; all customer lists and credit records; and all other records maintained in connection with the sale and administration of HMO and HMO-based POS plans in Houston or Dallas;

2. all intangible assets relating to the sale or administration of HMO and HMO-based POS plans, including but not limited to any licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, programs, and all manuals and technical information provided to employees, customers, suppliers, agents, or licensees.

F. “NYLCare-Southwest” means NYLCare Health Plans of the Southwest, Inc., a wholly owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Dallas, Fort Worth, and several smaller cities in North Texas, including Paris, Tyler, Longview and Amarillo, excepting the Excluded Assets, and includes:

1. all tangible assets necessary to compete in the sale or administration of HMO and HMO-based POS plans; all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, facilities, and other tangible property or improvements used in the sale or administration of HMO and HMO-based POS plans; all licenses, permits, and authorizations issued by any governmental organization relating to HMO and HMO-based POS plans; contracts or agreements for coverage of approximately one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees; all other contracts, agreements, leases, commitments, and understandings pertaining to HMO and HMO-based POS plans; all contracts with accounts located in Dallas; all customer lists and credit records; and all other records maintained in connection with the sale and administration of HMO and HMO-based POS plans in Dallas or Houston;
 2. all intangible assets relating to the sale or administration of HMO and HMO-based POS plans, including but not limited to any licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, programs, and all manuals and technical information provided to employees, customers, suppliers, agents, or licensees.
- G. "Prudential" means The Prudential Insurance Company of America, a New Jersey mutual insurance company with its principal place of business in Newark, New Jersey, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships

and joint ventures, and directors, officers, managers, agents, and employees.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to Aetna and Prudential and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Aetna shall require, as a condition of the sale or other disposition of NYLCare-Gulf Coast and NYLCare-Southwest, that the acquirer agree to be bound by the provisions of this Final Judgment.

IV. DIVESTITURE

Aetna is hereby ordered and directed in accordance with the terms of this Final Judgment to divest its interests in NYLCare-Gulf Coast and NYLCare-Southwest, excepting only the Excluded Assets, to an acquirer(s) acceptable to the plaintiffs, in their sole discretion, subject to Section XII.

B. Aetna shall use its best efforts to accomplish the divestitures as expeditiously as possible, and shall execute definitive purchase and sale agreement(s) and shall file all required applications for regulatory approval within one-hundred and twenty (120) calendar days after June 21, 1999. Aetna shall complete the divestiture within five (5) business days after it receives all necessary regulatory approvals for divestiture of NYLCare-Gulf Coast and NYLCare-Southwest and the acquisition of Prudential, or five (5) business days after notice of the entry of this Final Judgment by the Court, whichever is later.

C. The plaintiffs, in their sole discretion, subject to Section XII, may extend the time period for any divestitures for an additional period of time not to exceed sixty (60) calendar days. If a further extension is required to obtain necessary regulatory approvals, the plaintiffs, in their sole discretion, subject to Section XII, may grant the time necessary to obtain such approvals.

D. In accomplishing the divestitures ordered by this Final Judgment, Aetna promptly shall make known, by usual and customary means, the availability for purchase of NYLCare-Gulf Coast and NYLCare-Southwest. Aetna shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and shall provide such person with a copy of this Final Judgment. Aetna shall also offer to furnish to all prospective purchasers, subject to reasonable confidentiality assurances, all information regarding NYLCare-Gulf Coast and NYLCare-Southwest customarily provided in a due diligence process, except information subject to the attorney-client privilege or the attorney work-product privilege. Aetna shall make available such non-privileged information to the United States and the State of Texas at the same time that such information is made available to prospective purchasers.

E. Aetna shall permit prospective purchasers to have reasonable access to all NYLCare-Gulf Coast's and NYLCare-Southwest's personnel, physical facilities, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

F. Aetna shall not take any action that will impede in any way the operation of NYLCare-Gulf Coast and NYLCare-Southwest; shall immediately cease all actions directed at the integration of NYLCare-Gulf Coast and NYLCare-Southwest into Aetna.

G. Aetna shall take all steps necessary to ensure that NYLCare-Gulf Coast and

NYLCare-Southwest are maintained and operated as independent, on-going, economically viable, and active competitors, including but not limited to the following:

1. Aetna will appoint experienced senior management to run the combined business of NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture required by this Final Judgment has been accomplished. These executives may be recruited from within the existing Aetna or NYLCare organizations, with plaintiffs' approval, subject to Section IV.C, or from outside the company.
2. Aetna will create a separate and independent sales organization for NYLCare-Gulf Coast and NYLCare-Southwest.
3. Aetna will create a separate and independent provider relations organization for NYLCare-Gulf Coast and NYLCare-Southwest.
4. Aetna will create a separate and independent patient management/quality management organization for NYLCare-Gulf Coast and NYLCare-Southwest.
5. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
6. Aetna will create a separate and independent network operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
7. Aetna will create a separate and independent underwriting organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
8. Pursuant to transition services agreements approved by plaintiffs, subject to Section IV.C, Aetna will provide certain support services to NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture. These services may include human

resources, legal, finance, actuarial, software and computer operations support, and other services which are now provided to NYLCare-Gulf Coast and NYLCare-Southwest by other Aetna companies. These transition services agreements will contain appropriate confidentiality provisions to ensure that Aetna employees (other than the employees performing services under the agreements) do not receive information that Aetna is prohibited from receiving under paragraph III.C of the Hold Separate Stipulation and Order entered earlier.

H. Aetna shall not take any action to consummate the proposed acquisition of Prudential's health care business pursuant to the Asset Transfer and Acquisition Agreement, dated as of December 9, 1998, or any subsequent agreement between Aetna and Prudential, until such time as plaintiffs, to their sole satisfaction, subject to Section XII, have determined that NYLCare-Gulf Coast and NYLCare-Southwest are independent, viable competitors, that Aetna has complied with the terms of the Hold Separate Stipulation and Order entered previously, or until the divestitures required by this Final Judgment are complete.

I. Unless the plaintiffs, in their sole discretion, subject to Section XII, consent in writing, the divestitures pursuant to Section IV (or by trustee appointed pursuant to Section V) of this Final Judgment shall include the entire NYLCare-Gulf Coast and NYLCare-Southwest businesses, excepting only the Excluded Assets, operated pursuant to the Hold Separate Stipulation and Order entered previously in this proceeding, and shall be accomplished by selling or otherwise conveying NYLCare-Gulf Coast and NYLCare-Southwest to a purchaser(s) in such a way as to satisfy the plaintiffs in their sole discretion, subject to Section XII, that NYLCare-Gulf Coast and NYLCare-Southwest can and will be used by the purchaser(s) as part of a viable,

ongoing business engaged in the sale of HMO and HMO-based POS plans. These divestitures may be made to one or more purchasers provided that in each instance it is demonstrated to the sole satisfaction of the plaintiffs, subject to Section XII, that the acquirer(s) will remain viable competitors. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser(s) for whom it is demonstrated to the plaintiffs' sole satisfaction, subject to Section XII: (1) has the capability and intent of competing effectively in the sale of HMO and HMO-based POS plans in Dallas and Houston; (2) has the managerial, operational, and financial capability to compete effectively in the sale of HMO and HMO-based POS plans in Dallas and Houston; and (3) is not restrained through any agreement with Aetna or otherwise in its ability to compete effectively in the sale of HMO and HMO-based POS plans in Dallas and Houston.

J. For a period of one year from the date of the completion of the divestiture, Aetna shall not hire or solicit to hire any individual who, on the date of the divestiture, was an employee of NYLCare-Gulf Coast or NYLCare-Southwest, unless such individual has (1) a written offer of employment from a third party for a like position, or (2) a written notice from the acquirer of NYLCare-Gulf Coast or NYLCare-Southwest, stating that the company does not intend to continue to employ the individual in a like position.

V. APPOINTMENT OF TRUSTEE

A. In the event that Aetna has not divested NYLCare-Gulf Coast and NYLCare-Southwest within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the plaintiffs, a trustee selected by the plaintiffs in their sole discretion, subject to Section XII, to effect the required divestitures.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell NYLCare-Gulf Coast and NYLCare-Southwest, as described in paragraphs II.E and II.F of this Final Judgment. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to paragraph V.C of this Final Judgment, the trustee shall have the power and authority to hire, at the cost and expense of Aetna, any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the plaintiffs in their sole discretion, subject to Section XII; shall have the power and authority to require Aetna to sell NYLCare's PPO business in Houston and Dallas if the plaintiffs, in the exercise of their sole discretion, subject to Section XII, determine that such a sale is necessary for the preservation of competition; and shall have such other power and authority as this Court shall deem appropriate. Aetna shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Aetna must be

conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Aetna, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Aetna and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Aetna shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Aetna shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Aetna shall permit prospective purchasers of NYLCare-Gulf Coast and NYLCare-Southwest to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports may be filed under seal for in camera review. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports may be filed under seal for in camera review. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs, subject to Section XII.

VI. NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or Section V of this Final Judgment, Aetna or the trustee, whichever is then responsible for effecting the divestitures, shall notify the United States and the State of Texas of the proposed divestitures. If the trustee is responsible, it shall similarly notify Aetna. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that is the subject of the binding contract, together with full details of same. Within ten (10) calendar days of their receipt of such notice, the United States or the State of Texas may request from Aetna, the trustee, the proposed purchaser, or any other third party additional information concerning the proposed divestitures and the proposed purchaser. Aetna and the trustee shall furnish any additional information requested from them within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiffs have been provided the additional information requested from Aetna, the trustee, the proposed purchaser, and any third party, whichever is later, the plaintiffs, in their sole discretion, subject to Section XII, shall provide written notice to Aetna and the trustee, if there is one, stating whether it objects to the proposed divestiture. If the plaintiffs provide written notice to Aetna and the trustee that they do not object, then the divestiture may be consummated, subject only to Aetna's limited right to object to the sale under paragraph V.B of this Final Judgment. Absent written notice that the plaintiffs do not object

to the proposed purchaser or upon objection by the plaintiffs, such divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Aetna under paragraph V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. AFFIDAVITS

A. Within twenty-five (25) calendar days of the filing of the Hold Separate Order and Stipulation in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed, whether pursuant to Section IV or Section V of this Final Judgment, Aetna shall deliver to the United States and the State of Texas an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Aetna has made to solicit a buyer for NYLCare-Gulf Coast and NYLCare-Southwest and to provide required information to prospective purchasers including the limitations, if any, on such information.

B. Within twenty-five (25) calendar days of the filing of the Hold Separate Order and Stipulation in this matter, Aetna shall deliver to the United States and the State of Texas an affidavit that describes in detail all actions Aetna has taken and all steps Aetna has implemented on

an on-going basis to preserve NYLCare-Gulf Coast and NYLCare-Southwest pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order previously entered by this Court. The affidavit also shall describe, but not be limited to, Aetna's efforts to maintain and operate NYLCare-Gulf Coast and NYLCare-Southwest as active competitors, and the plans and timetable for Aetna's integration of Prudential's healthcare assets. Aetna shall deliver to the United States and the State of Texas an affidavit describing any changes to the efforts and actions outlined in Aetna's earlier affidavit(s) filed pursuant to this paragraph VII.B within fifteen (15) calendar days after such change is implemented.

C. Until one year after the divestitures required by this Final Judgment have been completed, Aetna shall preserve all records of all efforts made to preserve the businesses to be divested and effect the divestitures.

VIII. HOLD SEPARATE ORDER

Until the divestitures required by this Final Judgment have been accomplished, Aetna shall take all steps necessary to comply with Section III of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, to preserve the assets of NYLCare-Gulf Coast and NYLCare-Southwest, and to ensure that NYLCare-Gulf Coast and NYLCare-Southwest remain viable competitors in the sale of HMO and HMO-based POS plans in Dallas and Houston. Defendants shall take no action that would jeopardize the divestitures of NYLCare-Gulf Coast and NYLCare-Southwest.

IX. FINANCING

Aetna is ordered and directed not to finance all or any part of any purchase by an acquirer(s) made pursuant to Section IV or Section V of this Final Judgment.

X. COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment or for determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division, or the State of Texas, upon written request by the Texas Attorney General, and on reasonable notice to Aetna made to its principal offices, shall be permitted:

1. Access during Aetna's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents, including computerized records, in the possession or under the control of Aetna, which may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order;
2. Subject to the reasonable convenience of Aetna and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General of the United States, the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Texas, made to Aetna's principal offices, Aetna shall submit such written reports, under oath if requested, with respect to any matter contained in this Final Judgment and the Hold Separate Stipulation and Order entered earlier by this Court.

C. No information or documents obtained by the means provided in Section VII or Section X of this Final Judgment shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Texas, except in the course of legal proceedings to which the United States or the State of Texas is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time Aetna furnishes to the United States or the State of Texas information or documents, Aetna represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Aetna marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States or the State of Texas shall give ten (10) calendar days' notice to Aetna prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Aetna is not a party.

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. MISCELLANEOUS

In the event plaintiffs are unable to agree on a course of action regarding paragraphs IV.A, IV.C, IV.G, IV.H, V.A, V.B, V.F, and VI in seven days, then the United States may, in its sole discretion, act alone (or decline to act) with respect to the course of action.

XIII. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIV. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

United States District Judge